

In December 1996 the Office accepted that appellant, then a 52-year-old clerk, sustained right carpal tunnel syndrome and right lateral epicondylitis due to her repetitive job duties. The claim was given file number xxxxxx290. Appellant began to work in light-duty positions. On September 20, 2004 she filed an occupational disease claim alleging that she sustained a left

upper extremity condition due to her employment duties.¹ The claim was given the file number xxxxxx154. Appellant alleged that in 2002 she began experiencing pain in her left wrist and thumb. She attributed her condition to repetitive duties she performed with her left hand (due to the restrictions on her right upper extremity) including using her left hand to distribute items for carriers into cubby holes.²

In a March 28, 2005 decision, the Office denied appellant's claim for an employment-related left upper extremity condition on the grounds that she did not submit sufficient medical evidence to establish such an injury.³ In a March 12, 2007 decision, it affirmed its March 28, 2005 decision.

Appellant asserted that her claim was supported by reports of Dr. Scott M. Fried, an attending osteopath. On February 11, 2003 Dr. Fried stated that appellant reported that "she has been overusing her left hand and upper extremity and noticed symptoms back in November or December of 2002 which included a tight sensation through her left hand as well as numbness into her 2nd, 3rd and 4th digits." Appellant indicated that her light-duty work did not require her to perform repetitive tasks for more than an hour at a time. Dr. Fried did not provide any diagnosis for appellant's left upper extremity.⁴

On December 1, 2003 Dr. Fried indicated that appellant reported that she started a new job in October 2003 which involved stamping mail, placing mail in cubby holes, reaching for and grasping objects and performing limited computer work. Since that time, appellant noticed increased symptomatology involving her left hand and wrist. Dr. Fried stated, "Left is positive with radio sensory nerve positivity at the wrist and she has a positive Finkelstein test on the left." He added that the carpometacarpal grind of appellant's thumb was positive bilaterally (more on the right than left) which was "consistent with her increased pinching activity."

On August 16, 2004 Dr. Fried noted that appellant continued to report that she was having "increased symptoms especially on the left secondary to overusing this to compensate for the right." Appellant noted significant pain and discomfort as well as numbness and tingling with pain primarily at the radial bases of the thumbs and radial wrists but also some at the volar wrists. She reported performing limited computer activity in the morning and activities requiring repeated pinching, grasping and placing of stickers. In the afternoon, appellant cased mail for about an hour and a half which she mainly did with her left hand. Dr. Fried stated, "[Appellant] is definitely overusing the left to compensate for the right and we need to keep a close eye on this. I would recommend trying to avoid the casing activities and also some of the more repetitive activities she does perform." He continued to treat appellant after she retired in

¹ Appellant stopped work on June 23, 2004.

² Appellant retired from the employing establishment in March 2005.

³ In an April 28, 2006 decision, the Office affirmed its March 28, 2005 decision. In a February 28, 2007 order, the Board remanded the case to the Office for the addition of several missing medical reports. On remand the reports were added to the record.

⁴ On June 10, 2002 Dr. Fried had diagnosed carpometacarpal arthrosis appellant's thumbs (right greater than left).

March 2005 but none of the postretirement reports discussed appellant's work duties or their possible effect on her left upper extremity.

In a February 25, 2008 order, the Board vacated the Office's March 12, 2007 decision and remanded the case to the Office for combination of the case files for the xxxxxx290 and xxxxxx154 claims. On remand the Office combined the two case files. In an August 13, 2008 decision, it denied appellant's claim on the grounds that she did not submit sufficient medical evidence to show that she sustained an employment-related left upper extremity condition. The Office found that the reports of Dr. Fried were not sufficient to establish her claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and specific condition for which compensation is claimed are causally related to the employment injury.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁷ *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁸ *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

ANALYSIS

In December 1996 the Office accepted that appellant sustained right carpal tunnel syndrome and right lateral epicondylitis due to her repetitive job duties. On September 20, 2004 appellant filed an occupational disease claim alleging that she sustained a left upper extremity condition due to her employment duties. She attributed her condition to repetitive duties she performed with her left hand (due to the restrictions on her right) including using her left hand to distribute items for carriers into cubby holes.

The Board finds that appellant did not submit sufficient medical evidence to show that she sustained an employment-related left upper extremity condition. Appellant submitted reports from Dr. Fried, an attending osteopath; however, they do not contain a rationalized medical opinion establishing that she sustained a left arm injury.

On February 11, 2003 Dr. Fried stated that appellant reported that “she has been overusing her left hand and upper extremity and noticed symptoms back in November or December of 2002 which included a tight sensation through her left hand as well as numbness into her 2nd 3rd and 4th digits.” However, he did not provide any indication that appellant sustained an employment-related left upper extremity condition. On December 1, 2003 Dr. Fried stated that appellant reported that she started a new job in October 2003 which involved stamping mail, placing mail in cubby holes, reaching for and grasping objects and performing limited computer work. Since that time, appellant noticed increased symptomatology involving her left hand and wrist. Dr. Fried indicated that the carpometacarpal grind of appellant’s thumb was positive bilaterally (more on the right than left) which was “consistent with her increased pinching activity.” He did not provide a clear opinion that work duties caused a specific medical condition in appellant’s left upper extremity. Dr. Fried made reference to appellant’s engaging in pinching activity, but he did not describe this activity or any other employment activities in great detail, nor did he provide a rationalized opinion explaining how such activity could cause injury to appellant’s left thumb or other part of her left upper extremity.

On August 16, 2004 Dr. Fried noted that appellant continued to report that she was having “increased symptoms especially on the left secondary to overusing this to compensate for the right.” He provided some more detail of appellant’s work activities and stated, “[Appellant] is definitely overusing the left to compensate for the right and we need to keep a close eye on this. I would recommend trying to avoid the casing activities and also some of the more repetitive activities she does perform.” Dr. Fried did not, however, provide a rationalized medical opinion explaining how appellant could have sustained a left upper extremity condition due to employment factors. With regard to his recommendation regarding future activity, it is well established that the possibility of future injury constitutes no basis for the payment of compensation.⁹ Moreover, Dr. Fried did not explain why appellant’s left upper extremity problems would not be due to some nonwork-related cause, such as the natural progression of a degenerative process.¹⁰

⁹ *Gaeten F. Valenza*, 39 ECAB 1349, 1356 (1988).

¹⁰ Dr. Fried continued to treat appellant after she retired in March 2005 but none of the postretirement reports discussed appellant’s work duties or their possible effect on her left upper extremity.

For these reasons, appellant did not show she sustained a left upper extremity condition in the performance of duty.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a left upper extremity condition in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' August 13, 2008 decision is affirmed.

Issued: June 23, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board